No. 97-1343

(3)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

SCOTT and BRENDA LAWVERE, AMBASSADORS FOR CHRIST,

Petitioners,

vs.

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION FOR RESPONDENTS PENNSYLVANIA STATE CONSTABLES, GURN WEBER, STEVEN LITZELMAN AND LARRY PETERMAN

DAVID R. BAHL
Counsel of Record
J. DAVID SMITH
McCORMICK LAW FIRM
Attorneys for Respondents Pennsylvania State Constables, Gurn Weber, Steven Litzelman and Larry Peterman
835 West Fourth Street
P.O. Box 577
Williamsport, PA 17703
(717) 326-5131

145432

(800) 274-3321 • (800) 359-6859
A DIVISION OF COUNSEL PRESS

Lutz Appellate Services, inc.

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STATEMENT OF THE CASE

This petition is presented by Scott and Brenda Lawvere, self-styled Ambassadors for Christ (the "Lawveres"). The Lawveres' difficulties were triggered by their failure to comply with Pennsylvania statutory requirements regarding the compulsory education of their children. The Lawveres' particular claims as against respondents Pennsylvania State Constables and Constables Gurn Weber, Steven Litzelman, and Larry Peterman (collectively, the "Constables") arose out of the Constables' attempt to enforce orders issued by District Justice McRae against Scott Lawvere because of his statutory violations.

The Lawveres' petition and its focus on perceived procedural slights — including the Court of Appeals' supposed denial of the Lawveres' right to "equal access to the courts," Petition for Certiorari at 5 — is illustrative of the Lawveres' litigation pattern. Whether through design or inadvertence, the Lawveres have complicated the proceedings from the outset, with multiple filings and creatively-named documents unrecognized by the rules. Having themselves generated undue procedural complexity, the Lawveres have then complained throughout about purported technical violations that have no impact on the substantive outcome.

When the substance of the Lawveres' contentions is examined, it is evident that they contain nothing warranting this Court's review. As to the Constables, the District Court granted their summary judgment motion and its order was affirmed by the Court of Appeals. In requesting this Court's review of that ruling, the Lawveres present the garden-variety argument that there were triable issues of material fact that were somehow missed below. The Lawveres do not contend that the District Court, in ruling on the Constables' motion for summary judgment, articulated the wrong standard or cited the wrong

legal precedent; they only contend in conclusory fashion that the District Court "attempted to resolve issues of material fact in dispute. . . . " Petition for Certiorari at 8. The Lawveres fail, as they failed below, to point to the record with particularity and show any material fact that is in genuine dispute.

A. The petition misrepresents the procedural posture before the District Court.

In keeping with their proclivity to address procedure over substance, the Lawveres misrepresent the state of the record. Although the Lawveres contend that they were "hampered during discovery," Petition for Certiorari at 4, this assertion stands in stark contrast to the actual record of extensive documents, interrogatory answers, and depositions that were provided to the Lawveres in the course of the proceedings below. Despite this voluminous discovery, the Lawveres were unable to find any material portions that stood in opposition to the Constables' motion for summary judgment. Although they now claim incomplete discovery, the Lawveres did not raise that argument to the District Court in their opposition to the Constables' motion, and they filed no affidavit under Rule 56(f) of the Federal Rules of Civil Procedure.

B. The petition misrepresents the basis of the District Court's ruling with respect to the Constables' Motion.

The Lawveres further misperceive the basis for the ruling by the District Court with respect to the Constables' motion. That ruling can be stated in two paragraphs quoted from the District Court's order of January 29, 1997:

> The Lawveres make no assertion that the actions of the Constables were carried out pursuant to an unconstitutional policy or custom and we are aware

of none. Consequently, we will grant the Constables' motion for summary judgment.

* * *

Moreover, the Lawveres' amended complaint merely restates the claims set forth in their original complaint as to the East Lycoming School District and Robin Schuller. The Lawveres' amended complaint sets forth claims against the Constables which do not differ in substance from the claims set forth in the original complaint but which allege misconduct by individual Constables. The Lawveres, however, point to no evidence on the record that the Constables used force against Brenda Lawvere and we are aware of none. Furthermore, failure by police to issue Miranda warnings is not actionable under 42 U.S.C. § 1983. Warner vs. City of Lincoln, 864 F.2d 1436, 1442 (8th Cir. 1989); Cooper vs. Dupnik, 924 F.2d 1520, 1529 (9th Cir. 1991); Bennett vs. Passaic, 554 F.2d 1260, 1263 (10th Cir. 1976).

A. 7-8.

The District Court thus ruled that the Lawveres' claim failed as a matter of substantive law, without regard to whether the "plaintiffs suffer[ed] damage." Petition for Certiorari at 5.

REASONS FOR DENYING THE WRIT

It is plain from their formulation of the questions presented for review that the Lawveres' claim is ultimately fact-driven, case specific, and non-precedential. Three of the four questions they raise, Petition for Certiorari at i-ii, can be distilled into

one: whether the District Court overlooked material issues of fact existing in the record. As the District Court stated on this subject, the Lawveres fail to "point to [any] evidence in the record," A. 8, showing any such facts and there are none.

Contrary to the Lawveres' suggestion that there is some conflict between the law as applied by the District Court and the law applied in other circuits, the correct and only summary judgment standard was articulated and applied below. *See* A. 4-5. In applying that standard, the District Court correctly concluded that the Lawveres failed even to claim that the Constables' actions were carried out under an unconstitutional policy or custom, as required by this Court in *Monell v. New York City Department of Social Services*, 436 U.S. 658, 98 S. Ct. 2018 (1978). The District Court further noted the absence of any evidence of record to demonstrate the use of force against petitioner Brenda Lawvere. With respect to the contention that Scott Lawvere, when arrested, was not issued *Miranda* warnings, the District Court utilized established and uniform law from other circuits in determining that such a claim is not actionable under 42 U.S.C. § 1983, citing *Warner v. City of Lincoln*, 864 F.2d 1436, 1442 (8th Cir. 1989); *Cooper v. Dupnik*, 924 F.2d 1520, 2529 (9th Cir. 1991); and *Bennett v. Passaic*, 554 F.2d 1260, 1263 (10th Cir. 1976).

CONCLUSION

The Lawveres' petition presents nothing warranting this Court's review. Accordingly, that petition should be denied and this matter finally concluded.

Respectfully submitted,

DAVID R. BAHL
Counsel of Record
J. DAVID SMITH
McCORMICK LAW FIRM
Attorneys for Respondents
Pennsylvania State Constables,
Gurn Weber, Steven Litzelman
and Larry Peterman
835 West Fourth Street
P.O. Box 577
Williamsport, PA 17703
(717) 326-5131